

6.003 [Reserved]**Subpart 6.1—Full and Open Competition****6.100 Scope of subpart.**

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

[50 FR 1729, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985, as amended at 62 FR 51230, Sept. 30, 1997]

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids.* (See 6.401(a).)

(b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriated under (a) above, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) below.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541 *et seq.*) is a competitive procedure (see subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development

of a specific system or hardware procurement is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer of scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure.

[50 FR 1729, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985, as amended at 53 FR 27463, July 20, 1988; 59 FR 53716, Oct. 25, 1994]

Subpart 6.2—Full and Open Competition After Exclusion of Sources**6.200 Scope of subpart.**

This subpart prescribes policies and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102.

[64 FR 51831, Sept. 24, 1999]

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

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(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) above shall be supported by a determination and findings (D&F) (see subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in (a)(1) above is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

[50 FR 1729, Jan. 11, 1985, as amended at 60 FR 42653, Aug. 16, 1995]

6.203 Set-asides for small business concerns.

(a) To fulfill the statutory requirements relating to small business concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97-219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to set-asides.

[60 FR 48259, Sept. 18, 1995]

6.204 Section 8(a) competition.

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L.

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100-656, contracting officers may limit competition to eligible 8(a) contractors (see subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

[54 FR 46005, Oct. 31, 1989]

6.205 Set-asides for HUBZone small business concerns.

(a) To fulfill the statutory requirements relating to the HUBZone Act of 1997 (15 U.S.C. 631 note), contracting officers in participating agencies (see 19.1302) may set aside solicitations to allow only qualified HUBZone small business concerns to compete (see 19.1305).

(b) No separate justification or determination and findings is required under this part to set aside a contract action for qualified HUBZone small business concerns.

[63 FR 70267, Dec. 18, 1998]

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) 41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(c). Other executive agencies are subject to 41 U.S.C. 253(c). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency. (See 6.302.)